IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

MFA.No. 882 of 2001(B)

OPMV.2610/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA.
.....

APPELLANTS/ PETITIONERS:
----

1. **K.S. RAJASEKHARAN NAIR,**
   KIZHAKAYIL HOUSE,
   KOORULY.P.O.,
   PONKUNNAM.

2. **OMANA RAJASEKHARAN NAIR,**
   KIZHAKAYIL HOUSE,
   KOORULY.P.O.,
   PONKUNNAM.

3. **K.R. BINDU,**
   KIZHAKKAYIL HOUSE,
   KOORULY.P.O.,
   PONKUNNAM.

BY ADV. SRI.K.GOPALAKRISHNA KURUP,
ADV. SMT.G.VIDYA.

RESPONDENTS/ RESPONDENTS:
----

1. **DR. JOSE JOHN,**
   MARY MATHA HOSPITAL,
   KANJIRAPPALLY.P.O.,
   KOTTAYAM DIST.

2. **LATHA AJITHKUMAR,**
   VELLAPPALLY HOUSE,
   KANJIRAPPALLY,
   KOTTAYAM DISTRICT.

M.F.A. NO. 882/2001:

3. NATIONAL INSURANCE CO. LTD.,
Y.M.C.A. JUNCTION,
ALAPUZHA.

BY ADV. SMT.SARAH SALVY.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 882 of 2001

Dated this the 31st day of October, 2007

Judgment

Koshy,J.

A 19 year old son of the first appellant died in a motor accident. The tribunal found that the accident occurred due to the negligence of the first respondent who was driving the vehicle. The vehicle was owned by the second respondent and insured by the third respondent insurance company. The father, mother and younger sister of the deceased claimed compensation of Rs.Ten lakhs. Amount of compensation awarded was only Rs.1,99,000/-. Only quantum of compensation is disputed in this appeal.

2. Main grievance of the appellant is that the tribunal assessed the actual income of the deceased at Rs.3,000/-, but, after fixing Rs.3,000/- as monthly income, only Rs.1,250/- was taken as the monthly family contribution. It was proved by Ext.A10 certificate that the deceased was a registered headload worker and it is the contention of the appellants that since he was unmarried, major income would be given to the family alone. It is also contended that there was an unmarried sister. She also will expect

money from the brother at the time of her marriage. It is not more or less settled that only one-third amount need be deducted for personal expenses. Here, a low multiplier is taken. We are of the opinion that since Rs.3,000/- was taken as the monthly income of the deceased, Rs.2,000/- can be taken as the loss of family contribution.

3. Secondly, it was contended that multiplier of 11 taken by the tribunal was very low. If the age of the victim is taken into account, multiplier as per the second schedule is 16. It is further contended that in section 163-A application, the compensation is payable even if there is no negligence on the part of the driver of the offending vehicle. Therefore, compensation calculated under section 166 should be more than the compensation under section 163-A. It is further assessed that the tribunal has only taken the age of the father. But, mother was aged below and sister was also dependent. It is settled law that in a claim under section 166 when an unmarried person dies, the age of the claimant has to be looked into. The age of the mother is not shown. Father was aged 55 at the time of accident. If the mother's age is also passed 50 or more, multiplier is 11 and no enhancement is necessary. Therefore, no change is required in the multiplier used. Therefore,

compensation payable will be Rs.2000 x 12 x 11 = Rs.2,64,000/-. The tribunal has awarded for loss of family contribution an amount of Rs.1,65,000/-. So, additional compensation payable will be Rs.99,000/- over and above the amount awarded by the tribunal. The above additional compensation of Rs.99,000/- should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal. Since the accident occurred in 1995, the sister of the deceased must be given an amount of Rs.25,000/-. The balance compensation with interest shall be disbursed in equal instalments to first and second appellants, father and mother of the deceased.

Appeal allowed to the above extent.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 882 of 2001

Judgment

Dated:31st October, 2007